REMARKS

Claims 1, 4, 12, 18, 19, 21-25, and 28-57 have been amended. Claims 59-61 are new. Claims 12, 24, and 25 have been amended to correct typographical errors. Support for the other claim amendments exists throughout the specification, particularly at Paragraphs [0033], [0034], [0036]-[0038], [0059], [0061] and [0073] and Figures 4-12. Applicant submits that no new matter is introduced by these amendments.

Claim Rejections

Rejection of Claims 29-57 under 35 U.S.C. § 101

Claims 29-57 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Applicant has amended claims 29-57 to more particularly point out features of the invention. Support for the amendments can be found throughout the specification, for example, at Paragraphs [0038] and [0073] and in claims 28 and 56, both originally and as amended. Applicant submits that the claims as amended recite statutory subject matter because the claims are directed to processing of data representing physical objects or activities, and respectfully submits that this rejection has been overcome. *See* In re Beauregard, 53 F.3d 1583 (Fed. Cir. 1995); MPEP § 2106(IV)(B)(2)(a) & (b). Applicant respectfully requests withdrawal of this rejection.

Rejection of Claims 20, 22-23, 48, 50, and 51 under 35 U.S.C. § 112

Claims 20, 22-23, 48, 50, and 51 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as his invention.

Applicant herewith states that the claims recite the version of the relevant provisions of the 17 C.F.R. § 270.2a-7 and 17 C.F.R. § 1.25 that were in effect as of the filing date of the application. Applicant submits herewith as Exhibit A the version of 17 C.F.R. § 1.25 that was in effect prior to December 28, 2000 and as Exhibit B the version 17 C.F.R. § 1.25 that was in effect on the filing date of the instant application.

Applicant submits that the claims are definite and particularly point out Applicant's invention and that the rejection has been overcome. Applicant respectfully requests withdrawal of this rejection.

Rejection of Claims 1-58 under 35 U.S.C. § 103

Claims 1-17, 21-45, and 49-58 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Raghavan (Anita Raghavan. "GlobeSet to Ease Commodity Trading." Asian Wall Street Journal. New York, N.Y.: Nov. 23, 1992. Page 9).

Claims 18-20 and 46-48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Raghavan in view of U.S. Patent No. 5,193,056 issued to Boes ("Boes").

For a rejection under 35 U.S.C. § 103(a) to be proper, a reference either alone or in combination must teach or suggest to one of ordinary skill in the art all of the elements of the claimed invention as arranged in the claim.

With respect to claims 1-58, Applicant respectfully submits that neither Raghavan nor Boes either alone or in combination teach or suggest every element as recited by Applicant's amended claims, and therefore Applicant's claims are allowable.

Raghavan fails to teach or suggest at least the following elements of claim 1 as amended:

(a) purchasing...on behalf of a customer, shares of at least one registered money market mutual fund; and

(b) transferring...on behalf of said customer, at least a portion of said shares...to satisfy a margin requirement of a futures or options contract...

Moreover, each of Applicant's other independent claims 29, 57, and 58 recite an FCM transferring shares of a fund on behalf an FCM's customers, and are allowable for the same reasons as claim 1, as further discussed below.

Raghavan discusses an arrangement whereby an FCM could use shares in a fund, called the GlobeSet fund, to post original margin only on behalf of the FCM itself, not on behalf of a customer. The GlobeSet fund was "[s]tructured as a mutual fund" consisting of different portfolios that are each denominated in a different currency. Raghavan, at 2, fourth paragraph. However, Applicant believes that GlobeSet was not a registered money market mutual fund as that term is understood by those in the art, at least because no reference is made to registration of the GlobeSet fund under the rules promulgated to effect the Investment Advisers Act of 1940. 15 U.S.C. § 80b-1, *et seq.* An example of such a rule regarding registration is set out in 17 C.F.R. § 270.2a-7. Similarly, Raghavan does not discuss compliance of the GlobeSet fund with any registration requirements based on, for example, guidelines for the GlobeSet fund. *See* Paragraph [0018].

FCMs (also called "brokers") are required to segregate funds of customers from funds of the FCMs themselves. *See, e.g.,* Paragraphs [0058]-[0059]. Under the version

of 17 C.F.R. § 1.25 in effect at the time of Raghavan, the only permissible investment of customer funds was in cash or government-backed treasury bills. *See* Exhibit A.

The Office Action acknowledges that "Raghavan does not explicitly disclose wherein said FCM's are acting on behalf of a customer..." Office Action mailed May 24, 2006, Page 3. However, the Office Action further states that "it would have been obvious for anyone skilled in the ordinary art at the time of invention to allow an FCM to act on behalf of a third party consumer in order to allow the average individual to trade in futures and options contracts." *Id.*

Moreover, Raghavan discusses the GlobeSet fund as a vehicle that allowed shareholders in the GlobeSet fund, namely FCMs and the Chicago Mercantile Exchange (i.e., a clearing organization), to purchase shares in the fund via house accounts in the fund. The shares of the GlobeSet fund were exchanged only among other participants of the GlobeSet fund, so exchanges could occur instantaneously. Raghavan, at 2, fifth paragraph. Applicant believes the GlobeSet fund was not available as an investment vehicle to non-participants.

The GlobeSet fund of Raghavan appears to refer to posting collateral only for original margin obligations, namely, the good faith deposit on a derivative contract. See Raghavan, at 2, first paragraph. Raghavan does not appear to contemplate variation margin, which is independent from original margin and is calculated based on the marked-to-market gain or loss of open derivative contracts. *See* Paragraph [0006]. However, the Office Action states that "it is well known for the variation margin to be posted from said original margin requirement." Office Action, Page 6.

Applicant respectfully disagrees that the claimed invention would have been obvious at the time of Raghavan, at least because Applicant's claimed invention would have run afoul of the federal regulations in place at the time on FCMs regarding investment of customer funds. At the time Raghavan was published (1992), FCMs were only permitted to hold or invest customer funds in cash or treasury bills because of the version of 17 C.F.R. § 1.25 in place at that time. *See* Exhibit A. FCMs were not permitted to use other investment vehicles for investing funds of the FCM's customers. It was not until the list of permissible investments of customer funds was expanded in 2000 by a change to 17 C.F.R. § 1.25 that customer funds could be invested by FCMs in investment vehicles other than cash or government securities, such as, for example, money market mutual funds (including registered money market mutual funds). *See* Exhibit B. At least because investing customer funds in one or more funds (*i.e.,* registered money market mutual funds) rather than in cash or treasury bills would not have been permitted at the time of Raghavan, Applicant respectfully submits that the claimed invention is not taught or suggested by Raghavan.

As recited by Applicant's independent claims, moreover, an FCM has the authority to act on behalf of its customers, to hold and invest customer funds, as custodians, and to use customer funds to satisfy margin requirements. However, the customer retains a legal claim against funds invested on the customer's behalf. *See* Paragraph [0057]. For example, as recited by claim 1, in its capacity as custodian of its customer funds, the FCM invests customer funds in shares of registered money market mutual funds, and transfers the shares of the fund in the process of posting margin on

behalf of a customer. Transfer by an FCM of shares of the fund amounts to a legal transfer, with the FCM acting as a custodian of the customer funds.

FCMs invest customer funds in one or more funds, for example, registered money market mutual funds, on behalf of customers, and hold shares in such funds on customers' behalf. Unlike the GlobeSet fund of Raghavan, purchases and sales of such shares are not limited to participants in the particular fund or funds. Instead, shares in such fund or funds constitute marketable securities, with liquidity and a market outside the futures and commodities industry. *See* Paragraph [0063]. None of these concepts appear to be taught or suggested by Raghavan.

Further, at the time of Raghavan, both original and variation margin obligations were only settled by cash or treasury bills (i.e., government securities) between clearing organizations and FCMs (i.e., not with shares in the GlobeSet fund). Therefore, transferring cash or treasury bills *in addition* to transferring shares in a registered money market mutual fund, as recited by Applicant's claims 4 and 32, did not occur under the rules of clearing organizations in place at the time of Raghavan. Because FCMs could not invest customer funds in registered money market mutual funds at the time of Raghavan, margin obligations could not have been satisfied by transferring shares in the registered money market mutual fund in combination with cash or treasury bills, and therefore, Raghavan does not teach or suggest these features of Applicant's claims.

Regarding variation margin, Applicant respectfully disagrees that purchasing and transferring shares of a fund on behalf of customers to post variation margin, as recited by Applicant's claims 8, 11-13, 15, 36, 39-41, 43, and 59-61 is taught or suggested by

Raghavan. The Office Action appears to misunderstand variation margin. Variation margin payments are made based on the periodic change of the value of open derivative contracts. The Office Action states that variation margin is posted from original margin. See Office Action, Page 6. However, variation margin is unrelated to original margin. Original margin is a good faith performance bond deposit that is posted by an FCM to cover risk associated with open derivative contracts, unrelated to the settling of specific gains or losses, which are satisfied by variation margin. Raghavan only contemplates the GlobeSet fund for original margin as discussed above.

For at least this reason, Applicant submits that purchasing and transferring shares of a fund to settle a variation margin requirement is not taught or suggested by Raghavan. Exhibit C, attached, is a current copy of Chapter 8 of the Chicago Mercantile Exchange's rules relating to "Clearing House and Performance Bonds." Section 814 discusses cash as an acceptable way to post variation margin, and note 30 indicates that Section 814 has not been amended since October 1989, i.e., before publication of Raghavan. Although Section 814 discusses "cash or any other form of collateral approved by the Clearing House Risk Committee" may be used to post variation margin, Applicant believes that at the time of Raghavan and at the time the present application was filed, variation margin was settled only using cash or treasury bills (*i.e.,* not shares of a fund) and that no clearing organizations accepted other types of collateral for variation margin. If this rejection is maintained, the Examiner is respectfully requested to provide a reference or other evidence to support the proposition that variation margin is posted from original margin, so Applicant can refute these rejections with specificity.

The GlobeSet fund of Raghavan does not appear to describe or appreciate the requirement of segregating customer funds from FCM funds. Applicant's claimed invention allows segregation of customer funds and FCM funds into separate non-proprietary and proprietary accounts, as recited by Applicant's claims 9-10 and 37-38. As recited by Applicant's claims, shares of the fund are held in non-pledged accounts that are owned and controlled by FCMs. *See* Figure 5, Paragraph [0059]. Customer funds remain segregated in non-proprietary accounts from the FCMs' funds, both prior to and after transfer to the clearing organization. *See* Paragraphs [0056] and [0059].

Under applicable regulations on FCMs both now and at the time of Raghavan, funds (i.e., cash or government-backed securities) in an FCM's own accounts (i.e., house accounts) must be segregated from funds of customers (i.e., customer accounts). Margin payments are collected separately, and are maintained separately without commingling. However, as recited by Applicant's claims, FCMs can hold an ownership interest in shares of the fund in pledged accounts without commingling customer funds with FCM funds. Applicant submits that none of these concepts are taught or suggested by Raghavan.

For at least these reasons, Raghavan does not teach or suggest every element of Applicant's claim 1, and claim 1 is therefore submitted to be in condition for allowance. Moreover, Applicant's other independent claims 29, 57, and 58 all recite an FCM acting on behalf of a customer or its customers (i.e., transferring shares of a fund on behalf of a customer), and therefore are also allowable. Applicant believes that pending claims 2-14, 16-28, 30-44, and 46-58, also, therefore, define patentable subject matter.

Boes fails to cure the defects of Raghavan. Boes is directed to a particular investment arrangement, namely, the "hub-and-spoke" arrangement for mutual funds. Boes does not teach or suggest an FCM transferring shares of a fund on behalf of a customer to satisfy a margin requirement as recited by Applicant's independent claims. For at least this reason, neither Raghavan nor Boes, either alone or in combination, teach or suggest every element of Applicant's independent claims, and Applicant's independent claims should be allowable for at least that reason. Claims 2-56 depend directly or indirectly from claims 1 and 29, respectively, and Applicant submits that these claims also recite patentable subject matter.

New Claims

Applicant's new claims recite a method involving purchasing by an FCM shares in a fund and transfer the shares in the fund to a clearing organization to satisfy a variation margin obligation. For at least the reasons discussed above with respect to settling variation margin obligations by transferring shares in a fund, Applicant submits that neither Raghavan or Boes either alone or in combination teach or suggest every element of Applicant's new claims and the new claims are in condition for allowance.

CONCLUSION

Applicant requests that the Examiner reconsider the application and claims in light of the foregoing Amendment and Response, and respectfully submit that the claims are in condition for allowance. If the Examiner believes that a telephone conversation with Applicant's attorney would expedite allowance of this application, the Examiner is cordially invited to call the undersigned attorney at (617) 526-9800.

Respectfully submitted,

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